

Our File No.: 401.144770

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDYMAC BANK, F.S.B.,

Plaintiff(s),

**ANSWER**

-against-

CIVIL ACTION  
07 CV 6865 (LTS) (GWG)

NATIONAL SETTLEMENT AGENCY, INC.; STEVEN M.  
LEFF; RACHEL M. LEFF; RICHARD A. LEFF; and  
OPTAMERICA MORTGAGE, INC.,

Defendant(s).

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The defendant, OPTAMERICA MORTGAGE, INC., for its answer to the complaint  
of the plaintiff, respectfully alleges:

**PARTIES:**

1. Denies knowledge or information sufficient to form a belief as to the  
allegations contained in paragraphs "1", "2", "3", "4", "5", "6" and "7".
2. Admits the allegations contained in paragraphs "8".

**JURISDICTION AND VENUE:**

3. Denies knowledge or information sufficient to form a belief as to the  
allegations contained in paragraphs "9" and "10".

**FACTS:**

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "11", "12", "14", "15", "19", "20", "22", "23", "27", "28", "30", "31", "32", "33", "34", "35", "36", "37", "41", "42", "44", "45", "49" and "50".

5. Admits the allegations contained in paragraphs "13", "16", "17", "18", "24", "25", "26", "38", "39", "40", "46", "47", "48", "52", and "53".

6. As and for a response to the allegations in paragraphs "21", "29", "43" and "51" the answering defendant admits receiving agreed upon compensation for its origination services and delivery of the loan but denies knowledge or information sufficient to form a belief as to the funds that provided the compensation.

**COUNT I:**

7. Answering the subdivision thereof numbered "54", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

8. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "55", "56", "57" and "58".

**COUNT II:**

9. Answering the subdivision thereof numbered "59", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "60", "61", "62" and "63".

**COUNT III:**

11. Answering the subdivision thereof numbered "64", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

12. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "65", "66", "67" and "68".

**COUNT IV:**

13. Answering the subdivision thereof numbered "69", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

14. Denies the allegations contained in paragraphs "70", "71", "72", "73", "74", "76", "78" and "79".

15. As and for a response to the allegations in paragraphs numbered "75" (all parts) and "77", the defendant denies and refers all questions of law to the trial court.

**COUNT VI:**

16. Answering the subdivision thereof numbered "80", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

17. Denies the allegations contained in paragraphs "81", "82", "83", "84", "85" and "86".

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT,  
OPTAMERICA MORTGAGE, INC.,  
UPON INFORMATION AND BELIEF, ALLEGE(S):**

That if the plaintiff sustained any personal injuries or damages at the time and place alleged in the complaint, the plaintiff assumed the risks inherent in the activity in which plaintiff was engaged and further such injuries and/or damages were caused by reason of the culpable conduct and/or negligence of the plaintiff without any negligence on the part of the defendants contributing thereto. If said plaintiff should be successful in receiving a judgment against the defendants, the amount of damages recoverable by such plaintiff should be diminished in proportion to which her culpable conduct contributed to the happening of the incident in question.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

That the plaintiff(s) herein were guilty of culpable conduct, including contributory negligence and comparative negligence, which said conduct bars plaintiff(s)' right of recovery in proportion to which the said culpable conduct or negligence attributable to plaintiff(s) bears the culpable conduct or negligence which caused the damages, if any, or the occurrence complained of by plaintiff(s) was caused in whole or in part by the assumption of risk of the plaintiff(s).

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

While the answering defendants deny the plaintiff's allegation of negligence and liability, any injury and damages, if proven, were the result of intervening and/or interceding acts of superseding negligence and liability on the part of parties over which these answering defendants neither have control nor have the right to control, and for which acts or omissions these answering defendants are not legally responsible.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

Plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in this complaint.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

The criminal conduct of other persons is an intervening cause alternating the alleged wrongful conduct of the answering defendants.

**AS AND FOR A FIRST CROSS COMPLAINT  
OVER AND AGAINST THE DEFENDANT(S),  
NATIONAL SETTLEMENT AGENCY, INC.; STEVEN M. LEFF; RACHEL M. LEFF;  
RICHARD A. LEFF,  
THE ANSWERING DEFENDANT(S),  
OPTAMERICA MORTGAGE, INC.,  
ALLEGE(S) UPON INFORMATION AND BELIEF:**

That if the plaintiff(s) sustained injuries and damages as alleged in the complaint, through any fault other than the plaintiff(s)' own fault, then such injuries and damages were sustained due to the primary, active and sole fault of the defendant(s), as aforesaid, NATIONAL SETTLEMENT AGENCY, INC.; STEVEN M. LEFF; RACHEL M. LEFF; RICHARD A. LEFF, and the fault, if any, of the answering defendant(s) was secondary and passive only, and if the plaintiff(s) should obtain and/or recover judgment against the

answering defendant(s), then the defendant(s), as aforesaid, NATIONAL SETTLEMENT AGENCY, INC.; STEVEN M. LEFF; RACHEL M. LEFF; RICHARD A. LEFF, shall be liable over to the answering defendant(s) for the full amount of said judgment or for any part hereof obtained and/or recovered on the basis of apportionment of responsibility for the alleged occurrence as found by the Court or jury.

Further, by reason of this action, said answering defendant(s) has and will in the future incur costs and expenses, including counsel fees.

**AS AND FOR A SECOND CROSS COMPLAINT  
OVER AND AGAINST THE DEFENDANT(S),  
NATIONAL SETTLEMENT AGENCY, INC.; STEVEN M. LEFF; RACHEL M. LEFF;  
RICHARD A. LEFF,  
THE ANSWERING DEFENDANT(S),  
OPTAMERICA MORTGAGE, INC.,  
ALLEGE(S) UPON INFORMATION AND BELIEF:**

That if the plaintiff(s) sustained damages as alleged in the complaint, through the negligence, breach of contract, breach of warranty, carelessness and/or strict liability of the defendant(s), then such damages were sustained due to the primary, active and sole fault of the defendant(s), as aforesaid, NATIONAL SETTLEMENT AGENCY, INC.; STEVEN M. LEFF; RACHEL M. LEFF; RICHARD A. LEFF, by reason of negligence, breach of contract, breach of warranty, carelessness and/or strict liability and if the plaintiff(s) should obtain and/or recover judgment against this answering defendant(s), then the defendant(s), as aforesaid, NATIONAL SETTLEMENT AGENCY, INC.; STEVEN M. LEFF; RACHEL M. LEFF; RICHARD A. LEFF, shall be liable over to this answering defendant(s) for the full amount of said judgment or for any part hereof obtained and/or recovered on the basis of apportionment of responsibility for the alleged occurrence as found by the Court or jury.

Further, by reason of this action, said answering defendant(s) has and will in the future incur costs and expenses, including counsel fees.

**JURY DEMAND**

Defendant, OPTAMERICA MORTGAGE, INC., demands a trial by jury.

WHEREFORE, the defendant, OPTAMERICA MORTGAGE, INC., demands judgment dismissing the complaint against it, together with costs and disbursements of this action and attorneys fees.

Dated: New York, New York  
February 27, 2008

CALLAN, KOSTER, BRADY & BRENNAN, LLP

BY: \_\_\_\_\_  
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**VERIFICATION**

CIVIL ACTION  
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Alan Majzner, being duly sworn, deposes and states the following:

1. I am the President of the OPTAMERICA MORTGAGE, INC, and as such am fully familiar with the facts and circumstances of this matter.
2. I have read the foregoing verified answer and know the contents thereof. The same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, I believe it to be true.

Dated: New York, New York  
February 27, 2008

\_\_\_\_\_  
Alan Majzner, President  
OPTAMERICA MORTGAGE, INC.,

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Notary Public

